

AMENDED IN SENATE MARCH 27, 2014

SENATE BILL

No. 967

Introduced by Senators De León and Jackson

(Principal coauthor: Assembly Member Lowenthal)

**(Coauthors: Senators Beall, Cannella, Evans, Galgiani, Monning,
Pavley, and Torres Torres, Wolk, and Yee)**

(Coauthors: Assembly Members Ammiano, Fong, Gonzalez, Quirk-Silva,
Skinner, Ting, and Williams)

February 10, 2014

An act to add Section 67386 to the Education Code, relating to student safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 967, as amended, De León. Student safety: sexual assault.

~~Existing law, the Kristin Smart Campus Safety Act of 1998, law~~ requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions ~~to adopt rules requiring each of their respective campuses to enter into a written agreement with local law enforcement agencies relating to certain violent crimes. Existing law also requires those governing boards~~ to adopt and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

This bill would require ~~these~~ *the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of*

independent postsecondary institutions that receive public funds for student financial assistance to adopt policies concerning campus sexual violence, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements *or less formal partnerships* with on-campus and community-based organizations to *refer victims for assistance* or make services available to victims. The bill would also require the governing boards to implement comprehensive prevention programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 67386 is added to the Education Code,
- 2 to read:
- 3 67386. (a) The governing board of each community college
- 4 district, the Trustees of the California State University, the Regents
- 5 of the University of California, and the governing-board boards
- 6 of independent postsecondary-institutions, as defined in paragraph
- 7 (3) of subdivision (i) of Section 67381, *institutions that receive*
- 8 *public funds for student financial assistance* shall adopt a policy
- 9 concerning campus sexual violence, domestic violence, dating
- 10 violence, and stalking that includes all of the following:
- 11 (1) An affirmative consent standard in the determination of
- 12 whether consent was given by a complainant. “Affirmative
- 13 consent” is a freely and affirmatively communicated willingness

1 to participate in particular sexual activity or behavior, expressed
2 either by words or clear, unambiguous actions. It is the
3 responsibility of the person who wants to engage in the sexual
4 activity to ensure that he or she has the consent of the other person
5 to engage in the sexual activity. Lack of protest or resistance does
6 not mean consent, nor does silence mean consent. For that reason,
7 relying solely on nonverbal communication can lead to
8 misunderstanding. The existence of a dating relationship between
9 the persons involved, or the fact of a past sexual relationship, shall
10 not provide the basis for an assumption of consent. Consent must
11 be present throughout sexual activity, and at any time, a participant
12 can communicate that he or she no longer consents to continuing
13 the sexual activity. If there is confusion as to whether a person has
14 consented or continues to consent to sexual activity, it is essential
15 that the participants stop the activity until the confusion can be
16 clearly resolved.

17 (2) ~~In the evaluation of complaints in the disciplinary process,~~
18 ~~it shall not be a defense that the accused~~ *A provision specifying*
19 *that a claim by the accused that he or she believed that the*
20 *complainant consented to the sexual activity shall not be*
21 *considered* under either of the following circumstances:

22 (A) The accused's belief in consent arose from the self-induced
23 intoxication or recklessness of the accused.

24 (B) The accused did not take reasonable steps, in the
25 circumstances known to the accused at the time, to ascertain that
26 the complainant was consenting.

27 (3) A preponderance of the evidence standard in the
28 determination of disciplinary action.

29 (4) In the evaluation of complaints in the disciplinary process,
30 an individual under any of the following conditions is unable to
31 consent to the sexual activity:

32 (A) Asleep or unconscious.

33 (B) Incapacitated due to the influence of drugs, alcohol, or
34 medication.

35 (C) Unable to communicate due to a mental or physical
36 condition.

37 (b) The governing board of each community college district,
38 the Trustees of the California State University, the Regents of the
39 University of California, and the governing ~~board~~ *boards* of
40 independent postsecondary institutions, as defined in paragraph

~~(3) of subdivision (i) of Section 67381, institutions that receive public funds for student financial assistance shall adopt detailed and victim-centered sexual assault policies and protocols that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:~~

~~(1) A policy statement on how the institution will protect the confidentiality of victims; individuals involved in the incident.~~

~~(2) Initial officer response by the institution's personnel to a report of sexual assault, including requirements specific to assisting the victim, evidence collection, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses.~~

~~(3) Response to stranger and nonstranger sexual assault.~~

~~(4) The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive followup victim interview.~~

~~(5) Contacting and interviewing the accused.~~

~~(6) Medical forensic examinations and coordination with the forensic examiner.~~

~~(6) Providing written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.~~

~~(7) Participation of victim advocates.~~

~~(8) Investigative considerations regarding alcohol and drug-facilitated sexual assault, including requirements specific to evidence collection and forensic examination of victims.~~

~~(8) Investigating allegations that alcohol or drugs were involved in the incident.~~

~~(9) The role of the institutional staff supervision.~~

~~(10) Procedures for anonymous reporting of sexual assault.~~

(c) To the extent feasible, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing board boards of independent postsecondary institutions, as defined in paragraph (3) of subdivision (i) of Section 67381, institutions that receive public funds for student financial assistance shall enter into memoranda of understanding, agreements, or similar less formal partnerships with existing on-campus and

1 community-based organizations, including rape crisis centers, to
2 *refer victims for assistance or* make services available to victims,
3 including counseling, health, mental health, victim advocacy, and
4 legal assistance.

5 (d) The governing board of each community college district,
6 the Trustees of the California State University, the Regents of the
7 University of California, and the governing ~~board~~ *boards* of
8 independent postsecondary ~~institutions, as defined in paragraph~~
9 ~~(3) of subdivision (i) of Section 67381,~~ *institutions that receive*
10 *public funds for student financial assistance,* shall implement
11 comprehensive prevention programs addressing sexual violence,
12 domestic violence, dating violence, and stalking. A comprehensive
13 prevention program shall include a range of prevention strategies,
14 including, but not limited to, women's empowerment programming,
15 awareness raising campaigns, primary prevention, bystander
16 intervention, and risk reduction.

17 SEC. 2. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.